

HOUSE BILL 1236

By Akbari

AN ACT to amend Tennessee Code Annotated, Section  
36-6-106, relative to child custody.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 36-6-106(a), is amended by deleting subdivision (8) in its entirety and substituting instead the following:

(A) The physical, mental, and emotional fitness and character of each parent as it relates to the parent's ability to parent the child. To this end, the trial court may require either or both parents to provide healthcare records, including mental health records, and may require either or both parents to undergo an examination pursuant to Rule 35 of the Tennessee Rules of Civil Procedure;

(B) After the court conducts a hearing and makes a finding that a parent's mental health records are necessary for the proceedings, it shall order the production by the healthcare provider to the court by a date and time certain. The trial court shall then conduct an in camera review of the parent's records for purposes of redacting irrelevant or unduly prejudicial material. The court may appoint a neutral third party, such as a special master or fellow judge, to complete the in camera task. The records, after redaction, relating to the parent's ability to parent the child will then be provided to both parties, subject to a protective order as described in subdivision (a)(8)(D), for use in the comparative fitness analysis;

(C) After the court conducts a hearing and makes a finding that an examination is necessary for the proceedings, the court may order an examination of a party under Rule 35 of the Tennessee Rules of Civil Procedure. The party to be examined shall provide signed HIPAA releases so the suitably licensed or certified examiner may obtain

directly from the party's healthcare provider the mental health records relevant in time as deemed by the examiner to conform with professional and ethical standards applicable to the examination. If a parent declines a Rule 35 examiner's request for privileged information or gives express permission for the examiner to access only certain limited information, the court may draw a negative inference that the information would be adverse. The examiner's report and underlying facts or data supporting the report are available to the court and to the parties, subject to a protective order as described in subdivision (a)(8)(D); and

(D) A court order issued pursuant to this subdivision (a)(8) must contain a qualified protective order that limits the dissemination of the mental health information furnished to the court, the parties, and the parties' experts for the purpose of the litigation pending before the court and provides for the return or destruction of the mental health information at the conclusion of the proceedings;

SECTION 2. Tennessee Code Annotated, Section 36-6-106(a), is amended by deleting subdivision (15) in its entirety and substituting instead the following:

(15) Each parent's ability to instruct, inspire, and encourage the child to develop the skills and character necessary to become a successful adult who will contribute to and compete successfully in society; and

(16) Any other factors deemed relevant by the court.

SECTION 3. This act shall take effect upon becoming a law, the public welfare requiring it.